REMARKS

Since the obviousness-type double patenting rejection is provisional, no response is required at this time.

In order to expedite allowance of this application, the multiple-resistant bacteria has been specified as at least one of the bacterial referenced on page 1, line 34 to page 2, line 2, and in Example 1. Accordingly, it is respectfully submitted the rejection under 35 USC §112, first paragraph is moot and can be withdrawn.

In evaluating the claims under consideration vis-à-vis the prior art, it is important to recognize that, as stated on the first page of this application, "multiple-resistant" means resistance against at least one antibiotic known to be effective against a corresponding non-resistant strain. It will be appreciated that just because a given antibiotic may be active against a bacteria which is not multiple-resistant does not provide any reasonable basis for believing it will be effective against a strain of the same bacteria which has been become multiple-resistant. Indeed, the very definition of "multiple-resistant" is that the antibiotic has lost antibiotic activity. As a result, a skilled person would not consider investigating antibacterial agents only known to be active against non-multi-resistant bacteria when desiring to inhibit multiple-resistant bacteria since that is a contradiction in terms. The art is replete with antibiotics which have failed to provide an inhibitive effect with respect to multiple-resistant bacteria. Indeed, the problem of multiple-resistant bacteria in and of itself would lead the skilled person away from testing substances which have only been proven to be antibacterial against non-resistant strains but rather would look to find another agent which had been previously indicated to have at least some of effect against multiple-resistant

bacteria. To the extent that some antibiotics have shown at least some degree of effect on multiple-resistant bacteria, they do not include any member of the broad class of diols. The activity of clindamycin, noted by the Examiner, is therefore not relevant. Accordingly, the artisan would have no reason to even attempt experimentation to see if diols had multiple-resistant bacteria effect, and even if such an investigation was made for some unknown reason, there would be no reasonable expectation of success.

Claims 1, 2, 8-10, 18, and 22 were rejected under 35 U.S.C. § 103 over Swanbeck. This rejection is respectfully traversed.

The Swanbeck patent teaches topical treatment of bacteria and can comprise application of pentane-1,5-diol. However, the "bacteria" referred to in this reference are the non-resistant strains and, as noted above, there is no reasonable expectation that the same agent would be effective against a multiple-resistant strain, particularly those set forth in these claims. Quite to the contrary, the fact that the bacteria has developed resistance to agents used to combat it suggests looking elsewhere for a solution to the multiple resistant problem. Moreover, the mechanism by which most multi-resistant bacteria operate is largely unknown. Given the fact that there is no reasonable expectation of success, it is respectfully submitted that this rejection is untenable.

Claims 1, 8, 10-13, 20, 22, 23, and 24 were rejected under 35 U.S.C. § 103 over Goodman in view of Tsao. This rejection is also respectfully traversed.

Goodman teaches a topical treatment of a skin condition which contains a nitroimidazole drug as the antimicrobial active agent and the composition contains a water-miscible organic solvent which can be an alkylene glycol. Various suitable

alkylene glycols as solvents are disclosed at column 3, lines 34-38. It is still applicant's position that "pentylene glycol" is 1,5-pentanediol, and pentylene glycol is the INCI name for 1,3-pentanediol. In any event, Goodman is deficient in that it fails to teach or suggest that any alkylene glycol has multiple-resistant antibiotic activity, and therefore fails to teach glycol use as an active agent.

The Tsao reference has been cited for its teaching of the amount of certain alkylene glycols, including 1,5-propylene glycol in a contact lens disinfectant solution. Tsao also fails to teach or suggest that 1,5-pentanediol will have any multiple-resistant antibiotic activity.

The combination of Goodman and Tsao does not teach or suggest that 1,5-pentanediol will have any antibiotic activity against multiple-resistant bacteria and can be used as an active agent. Therefore this rejection is untenable and should be withdrawn.

Claims 13 and 25 have been rejected under 35 U.S.C. § 103 over Goodman and Tsao in further view of Noll. The combination of Goodman and Tsao has been discussed above while Noll has been cited only for the use of a detergent. Accordingly, the deficiencies in Goodman and Tsao remain and this rejection is also untenable.

Claims 4, 14, 19, and 21 were rejected under 35 U.S.C. § 103 over Swanbeck in view of Buseman. Swanbeck has been discussed above and Buseman has been cited only to teach adhesive patches. Accordingly, this combination still has the same deficiencies which have been discussed and cannot serve to render these claims unpatentable.

In view of the above amendments and remarks, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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